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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES P. MITCHELL

Appeal 2009-0711
Application 09/494,198
Technology Center 2600

Decided: February 24, 2009

Before KENNETH W. HAIRSTON, JOSEPH F. RUGGIERO,
and JOHN A. JEFFERY, *Administrative Patent Judges*.

RUGGIERO, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134 from the Final Rejection of claims 1-17. Claims 18-28 have been allowed by the Examiner. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

Appellant's claimed invention relates to a communication system for a mobile platform including a direct broadcast very low range receiver located on the mobile platform. Internet access is provided via the direct broadcast receiver to a computer network terminal on the mobile platform. (Spec. 8:1-11).

Claim 1 is illustrative of the invention and reads as follows:

1. A communication system for a mobile platform,
comprising:

a direct broadcast very low range receiver located on the mobile platform and limited to receiving signals transmitted from within a very short range; and

a computer network including at least one terminal on the mobile platform, the terminal providing Internet access through the direct broadcast receiver.

The Examiner's Answer cites the following prior art references:

LaRocca	US 6,314,572 B1	Nov. 6, 2001 (filed May 28, 1999)
Hiett	US 6,477,152 B1	Nov. 5, 2002 (filed Dec. 30, 1998)

Claims 1, 2, 4-9, 11-14, 16, and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiatt.

Claims 3, 10, and 15 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hiatt in view of LaRocca.

Rather than reiterate the arguments of Appellant and the Examiner, reference is made to the Briefs and Answer for the respective details. Only

those arguments actually made by Appellant have been considered in this decision. Arguments which Appellant could have made but chose not to make in the Briefs have not been considered and are deemed to be waived [see 37 C.F.R. § 41.37(c)(1)(vii)].

ISSUE

Under 35 U.S.C. § 103(a), with respect to appealed claims 1-17, did the Examiner err in finding claims 1, 2, 4-9, 11-14, 16, and 17 obvious over Hiett, and claims 3, 10, 15 obvious over the combination of Hiett and LaRocca.

The pivotal issues before us in making this determination are whether:

- (i) Appellant has demonstrated that the Examiner erred in finding that the “within 1000 feet” receiver communication range of Hiett overlaps the claimed “very short range” receiver communication range.
- (ii) Appellant has overcome the prima facie case of obviousness established by the finding of overlapping ranges.
- (iii) Appellant has demonstrated error in the Examiner’s finding of obviousness to the skilled artisan of applying the back channel transmitter teachings of LaRocca to Hiett.

FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence:

1. Appellant’s invention is directed to a communication system and method for a mobile platform including an embodiment illustrated in Figure 2 in which a mobile platform 35, such as an aircraft, is located at a

docking area 37. Appellant discloses (Spec. 16:12-13) that the docking area transmitter 70 and the mobile platform transmitter 66 are “preferably short range communication units.”

2. Appellant further discloses (Spec. 16:13-14) that the communication system 30 “can be designed so that transmitters 66 and 70 only require a range of several feet or a few meters.” A wireless airport gateway communications system embodiment is illustrated in Appellant’s Figure 6 and includes a wireless gateway link 130 which Appellant discloses (Spec. 22:13-14) “can be a very short-range (several feet to a few meters) high-speed radio data link....”

3. Hiatt discloses (col. 1, ll. 6-9 and 50-53 and col. 2, ll. 52-57) a communications system for requesting and receiving data from a remote source with an information request system exemplary located on an aircraft and coupled to the remote data source by various communication connections such as an airport wireless local area network (LAN).

4. Hiatt also discloses (col. 9, ll. 23-31 and 65-67) an embodiment illustrated in Figure 5 directed to a ground-based LAN 512 configured to communicate with a LAN interface 506 on an aircraft operating in an airport area, such as a loading terminal, “within 1000 feet” of the LAN 512.

5. LaRocca discloses (Fig. 2, col. 6, l. 57 to col. 7, l. 65) an interactive information distribution system including a back channel transmitter.

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of

obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966). “[T]he examiner bears the initial burden, on review of the prior art or on any other ground, of presenting a *prima facie* case of unpatentability.” *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). Furthermore,

‘there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness’ . . . [H]owever, the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.’

KSR Int’l Co. v. Teleflex Inc., 550 U.S. 398, 127 S. Ct. 1727, 1741 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

ANALYSIS

I. THE REJECTION OF CLAIMS 1, 2, 4-9, 11-14, 16, AND 17 BASED ON THE TEACHINGS OF HIETT.

With respect to the Examiner’s obviousness rejection of independent claims 1 and 8 based on the teachings of Hiett, Appellant’s arguments in response assert a failure by the Examiner to establish a *prima facie* case of obviousness since all of the claimed limitations are not taught or suggested by the applied Hiett reference. Appellant’s arguments focus on the alleged deficiency of Hiett in disclosing the claimed feature, present in each of the appealed independent claims 1 and 8, of a direct broadcast receiver which is “limited to receiving signals transmitted from within a very short range.”

According to Appellant (App. Br. 9-12; Reply Br. 2-3), the only communication range disclosed in Hiett is a 1000 foot range and, accordingly, Hiett's receiver could not operate over the 1000 foot range with a receiver limited to receiving very short range signals.¹

We do not find Appellant's arguments to be persuasive in convincing us of any error in the Examiner's stated position. It is well settled that a *prima facie* case of obviousness exists when a claimed range overlaps the ranges disclosed in the prior art. *See In re Geisler*, 116 F.3d 1465, 1469 (Fed. Cir. 1997), *In re Woodruff*, 919 F.2d 1575, 1578, (CCPA 1976), *In re Malagari*, 499 F.2d 1297, 1303 (CCPA 1974). Further, as stated in *In re Peterson*, 315 F.3d 1325, 1330 (Fed. Cir. 2003):

Selecting a narrow range from *within* a somewhat broader range disclosed in a prior art reference is no less obvious than identifying a range that simply *overlaps* a disclosed range. In fact, when, as here, the claimed ranges are completely encompassed by the prior art, the conclusion is even more compelling than in the case of mere overlap.

Since it is apparent that the factual situation presented to us here establishes that Hiett's disclosed mobile platform receiver communication range of "within 1000 feet" (col. 9, ll. 23-26) overlaps Appellant's claimed "very short range," which is defined as "several feet or a few meters," a *prima facie* case of obviousness exists.

A *prima facie* case of obviousness based on overlapping ranges can be rebutted by an indication of the criticality of the claimed range such as by a

¹ A "very short range" is defined by Appellant as "a range of several feet or a few meters." (Spec. 22:13-14).

showing of unexpected results relative to the prior art range. *In re Woodruff*, 919 F.2d at 1578. In the present case, however, Appellant has not alleged, much less established, either in the disclosure of the invention or the presented arguments, that the claimed communication range is critical or produces unexpected results. To the contrary, Appellant's disclosure (Spec. 16:12-14) that the transmitters 66 and 70 are "preferably" short range communication units and "can" be designed that they require only a very short range is an indication that such ranges are "preferred" but not critical. A similar "preferred" implementation is discussed by Appellant at page 22, lines 13-14 of the Specification in describing that wireless gatelink 130 "can be" a very short range data link (FF 2).

Further, while Appellant may alternatively rebut a prima facie case of obviousness by showing that the prior art teaches away from the claimed range, *Geisler*, 116 F.3d at 1469, we find no such "teaching away" in the prior art disclosure of Hiett. As with the disclosed invention of Appellant, the system of Hiett is designed to provide communication to a mobile platform, such as an aircraft, when it is operating in an airport and in close proximity to a loading terminal. (Hiett, col. 9, ll. 23-26 and 65-67).

For the above reasons, since it is our opinion that the Examiner has established a prima facie case of obviousness which has not been overcome by any convincing arguments from Appellant, the Examiner's 35 U.S.C. § 103(a) rejection of independent claims 1 and 8, as well as dependent claims 2, 4-7, 9, 11-14, 16, and 17 not separately argued by Appellant, is sustained.

**II. THE REJECTION OF DEPENDENT CLAIMS 3, 10, and 15
BASED ON THE COMBINATION OF HIETT AND
LARocca.**

This rejection is sustained as well. We find no error in the Examiner's application (Ans. 6) of the back channel transmitter teachings of LaRocca (col. 6, l. 57 to col. 7, l. 65) to the onboard entertainment system disclosure of Hiett. Appellant's arguments (App. Br. 12-13; Reply Br. 3-4) rely on the arguments asserted previously against the Examiner's rejection of independent claims 1 and 8, which arguments we found to be unpersuasive for all of the previously discussed reasons.

CONCLUSION OF LAW

Based on the findings of facts and analysis above, we conclude that Appellant has not shown that the Examiner erred in rejecting appealed claims 1-17 for obviousness under 35 U.S.C. § 103.

DECISION

The Examiner's 35 U.S.C. § 103 rejection of claims 1-17, all of the appealed claims, is affirmed.

Appeal 2009-0711
Application 09/494,198

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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